AXE & ECKLUND, P.C.

MEMORANDUM

TO: ATTACHED DISTRIBUTION LIST

FROM: JOHN R. AXE, PRESIDENT
AXE & ECKLUND, P.C.

RE: ONE YEAR EXTENSION OF AUTHORIZATION FOR PENSION AND RETIREES HEALTH CARE BONDS CURRENTLY AUTHORIZED BY ACT 329 OF THE PUBLIC ACTS OF MICHIGAN OF 2012 (SENATE BILL NO. 922)

DATE: SEPTEMBER 9, 2014

I. BACKGROUND

A. GENERAL BACKGROUND ON THIS TYPE OF FINANCING

In 2005, Oakland County began exploring the possibility of a borrowing to completely fund its unfunded retirees health care liability. As a result, our firm prepared legislation, which was introduced in 2006, which authorized municipalities, including Counties to issue bonds for the purpose of funding its unfunded retirees health care liability. After a long and convoluted legislative fight, the legislation was adopted by the Legislature in late 2006 and then, despite broad support from many Counties and Cities, vetoed by the Governor.

B. ISSUANCE OF CERTIFICATES OF PARTICIPATION

As a result, Oakland County was left no alternative but to issue Certificates of Participation by a retiree medical benefits funding trust, which was created by the County in 2007. These certificates of Participation, which originally totaled $556,985,000, were taxable obligations with interest rates varying between 6% and 6.25% per annum.

In the next three years a renewed effort was made to obtain legislation authorizing what was proposed by Oakland County in 2005. None of those efforts were successful.

Finally, in the summer of 2012 the new Governor prepared legislation that permitted such borrowings for the purpose of providing funds for unfunded pension liabilities. Our firm on behalf of Oakland County and other municipalities prepared amendments to this legislation to allow borrowings for both unfunded amounts owned by municipalities either for retiree health care or pensions. That legislation was passed by the Michigan Legislature in October of 2012 and signed into law effective October 9, 2012.

II. PROVISIONS IN THE NEW LAW

During the period, beginning in October 2012 and ending on December 31, 2014, a county, city, village or township (a "Municipality") may issue bonds to pay the costs of the unfunded accrued health care or pension liability of the Municipality. Before a Municipality issues such bonds, the Municipality must do the following:

1. It must publish a Notice of Intent to issue the bonds which must be published in a newspaper of general circulation within the Municipality and which gives the Municipality's residents and tax payers the right to circulate referendum petitions.

2. The Municipality must also prepare and make available to the public a comprehensive financial plan that includes all of the following:

   (a) An analysis of the current and future obligations of the Municipality with respect to each retirement program and each postemployment health care benefit program of the Municipality.

   (b) Evidence that the issuance of the municipal security together with other funds lawfully available will be sufficient to eliminate the unfunded pension liability or the unfunded accrued health care liability.

   (c) A debt service amortization schedule and a description of actions required to satisfy the debt service amortization schedule.

(d) A certification by the person preparing the plan that the comprehensive financial plan is complete and accurate.

(e) If the proceeds of the borrowing are to be deposited in a health care trust fund, a plan in place from the Municipality to mitigate the increase in health care costs and may include a wellness program that promotes the maintenance or improvement of healthy behaviors.

3. Once the 45-day referendum period expires, the Municipality then must apply to the Michigan Department of Treasury for permission to issue the bonds.

4. Once permission is received the Municipality is authorized to issue the bonds.

III. BENEFITS OF THIS TYPE OF FINANCING

A. Opportunity for the County to Reduce their Annual Payments for Health Care and/or Pensions

The main reason Municipalities are interested in this type of financing is the opportunity to reduce the annual amounts which the Municipality must pay for retirees health care and pension benefits. Based upon the experience of Oakland County, this type of program has reduced the county's annual costs for retiree health care benefits ever since Oakland County issued its Certificates of Participation in 2007.

B. Certainty as to the Amount which Must be Paid for Retirees Health Care and Pension Benefits Each Year

Once the bonds are issued, the Municipality knows that it must make specified annual payments of principal and interest to retire the bonds. As long as the Health Care Trust and Pension Trusts remain fully funded, no additional amounts will have to be added from annual appropriations. The certainty of payments is a real advantage for Municipality's budgeting in future years.

C. Fully Funded VEBA Trusts and Pension Funds are Especially Popular with the Rating Agencies

One reason Oakland County issued Certificates of Participation to fully fund their VEBA Trust was the knowledge that if they failed to do so, there was a potential that the unfunded liability shown on the County's balance sheet might result in the County's receiving a lower credit rating from either Moody's or Standard & Poor's. It was well known that both rating agencies regarded unfunded liabilities as a potential problem in future years where budgets might be tight and the Municipality might be tempted not to fund the liability at all thereby failing to deal with the problem. This of course, is why certain Municipalities (Detroit's Unfunded Retiree Health Care Liability exceeds $5,700,000,000) have had such a difficult time.

IV. BOND ISSUES SINCE THE ADOPTION OF PUBLIC ACT 329

A. Oakland County Retirees Health Care Refunding Bonds, Series 2013A & 2013B

On September 27, 2013, Oakland County issued $350,000,000 of Retirees Health Care Refunding Bonds for the purpose of refunding the balance of the 2007 Certificates of Participation which were evidence of the County's contract obligation of $556,985,000 entered into in July of 2007. As a result of this transaction, Oakland County saved in excess of $170,000,000 by issuing the refunding bonds.

B. Charter Township of Bloomfield General Obligation Limited Tax Pension Obligation Bonds, Series 2013

In November of 2013, the Charter Township of Bloomfield issued $80,780,000 of General Obligation Limited Tax Pension Obligation Bonds for the purpose of fully funding the Township's pension liability for the Township's defined benefit pension plan. These bonds are callable on May 1, 2023.

C. Charter Township of West Bloomfield General Obligation Limited Tax Pension Obligation Bonds, Series 2013

In December of 2013, the Charter Township of West Bloomfield issued $9,235,000 of General Obligation Limited Tax Pension Obligation Bonds for the purpose of fully funding the Township's pension liability for the Township's defined benefit pension plan. These bonds are callable on May 1, 2023.

D. The City of Farmington Limited Tax General Obligation Bonds, Series 2013

In December of 2013, the City of Farmington issued $7,910,000 of Limited Tax General Obligation Bonds for the purpose of fully funding the City's unfunded accrued health care liability. These bonds are callable on June 1, 2023.

E. County of Saginaw General Obligation Limited Tax Pension Obligation Bonds, Series 2013

In January of 2013, the County of Saginaw issued $52,005,000 of General Obligation Limited Tax Pension Obligation Bonds for the purpose of fully funding the County's defined benefit plan. These bonds are callable on November 1, 2023.

V. REASONS FOR THE PROPOSED LEGISLATION

A. Current Law Expires on December 31, 2014

Because this law authorized a new and in some ways an experimental program, the legislature decided to only permit its use for a limited number of Municipalities and for a limited period of time. So far, only six Municipalities have taken advantage of the opportunity to issue such bonds out of more than 170 Municipalities, which are currently eligible to issue such bonds.

In addition to the Municipalities, which have already issued, two in Macomb County (the County of Macomb and the City of Warren) are currently exploring the possibility of issuing such bonds. In addition, we are aware of at least ten other Municipalities, which are in some stage of reviewing the possibility or have started the process. One reason the process has not moved more quickly, was the uncertainty as to the impact of the Detroit bankruptcy on interest rates for municipal bonds issued in the Michigan area, especially in eastern Michigan. This has already caused more than one Municipality to postpone such a bond issue until later this year.

In order to issue such bonds, there is a fairly lengthy timetable (as outlined in Section II above) before the bonds can be issued. For that reason, it would be advisable to extend the current sunset provision of December 31, 2014 to December 31, 2015. This will give both the County of Macomb and the City of Warren a chance to consider issuing such bonds and to actually complete the process even if they are not able to sell the bonds until late 2014 or early 2015.

B. Right to Issue Refunding Bonds After December 31, 2014

The current law contains no provision permitting the issuance of refunding bonds after the sunset provision of December 31, 2014 takes effect.

As indicated above, Oakland County was able to issue refunding bonds is September of 2013, thereby saving the County in excess of $170,000,000. All of the other bond issues issued in 2013 and early 2014 are also callable in the future (**BUT AFTER DECEMBER 31, 2014**) which means the potential exists to refund these bonds as well at possible further savings to each of the Municipalities which issued the bonds.

VI. PROPOSED SUBSTITUTE SENATE BILL NO. 922

Attached hereto, we have included Substitute Senate Bill 922 which will extend the sunset clause on the current legislation to December 31, 2015 and will also permit in the future (even after December 31, 2015) Municipalities which have already issued such bonds to refund these bonds.

This bill will be considered at the Financial Liability Reform Committee of the House of Representatives on Thursday, September 11, 2014.

SUBSTITUTE FOR

SENATE BILL NO. 922

A bill to amend 2001 PA 34, entitled

"Revised municipal finance act,"

by amending section 518 (MCL 141.2518), as added by 2012 PA 329.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 518. (1) Through December 31, ~~2014,~~ **2015,** in connection with the partial or complete cessation of accruals to a defined benefit plan or the closure of the defined benefit plan to new or existing employees, and the implementation of a defined contribution plan, or to fund costs of a county, city, village, or township that has already ceased accruals to a defined benefit plan, a county, city, village, or township may by ordinance or resolution of its governing body, and without a vote of its electors, issue a municipal security under this section to pay all or part of the costs of the unfunded pension liability for that retirement program provided that the amount of taxes necessary to pay the principal and interest on that municipal security, together with the taxes levied for the same year, shall not exceed the limit authorized by law.

(2) Through December 31, ~~2014,~~ **2015,** a county, city, village, or township may by ordinance or resolution of its governing body, and without a vote of its electors, issue a municipal security under this section to pay the costs of the unfunded accrued health care liability provided that the amount of taxes necessary to pay the principal and interest on that municipal security, together with the taxes levied for the same year, shall not exceed the limit authorized by law or to refund in whole or in part a contract obligation issued for the same purpose. Postemployment health care or benefits may be funded by the county, city, village, or township. The funding of postemployment health care benefits by a county, city, village, or township as provided in this act shall not constitute a contract to pay the postemployment health care benefits.

(3) Before a county, city, village, or township issues a municipal security under this section, the county, city, village, or township shall publish a notice of intent to issue the municipal security. The notice of intent and the rights of referendum shall meet the requirements of section 517(2).

(4) Before a county, city, village, or township issues a municipal security under this section, the county, city, village, or township shall prepare and make available to the public a comprehensive financial plan that includes all of the following:

(a) An analysis of the current and future obligations of the county, city, village, or township with respect to each retirement program and each postemployment health care benefit program of the county, city, village, or township.

(b) Evidence that the issuance of the municipal security together with other funds lawfully available will be sufficient to eliminate the unfunded pension liability or the unfunded accrued health care liability.

(c) A debt service amortization schedule and a description of actions required to satisfy the debt service amortization schedule.

(d) A certification by the person preparing the plan that the comprehensive financial plan is complete and accurate.

(e) If the proceeds of the borrowing are to be deposited in a health care trust fund, a plan in place from the county, city, village, or township to mitigate the increase in health care costs and may include a wellness program that promotes the maintenance or improvement of healthy behaviors.

(5) Municipal securities issued under this section by a county, city, village, or township and the interest on and income from the municipal securities are exempt from taxation by this state or a political subdivision of this state.

(6) The proceeds of a municipal security issued under this section may be used to pay the costs of issuance of the municipal security. Except for a refunding, the proceeds of a municipal security issued under this section to cover unfunded health care liability shall be deposited in a health care trust fund, a trust created by the issuer which has as its beneficiary a health care

trust fund, or, for a county, city, village, or township, a restricted fund within a trust that would only be used to retire the municipal securities issued under subsection (1) or (3). A county, city, village, or township shall have the power to create a trust to carry out the purposes of this subsection. The trust created under this subsection shall invest its funds in the same manner as funds invested by a health care trust fund. The trust created under this subsection shall comply with all of the following:

(a) Report its financial condition according to generally accepted accounting principles.

(b) Be tax-exempt under the internal revenue code.

(7) A county, city, village, or township issuing municipal securities under this section may enter into indentures or other agreements with trustees and escrow agents for the issuance, administration, or payment of the municipal securities.

(8) Before a county, city, village, or township issues a municipal security under this section, the county, city, village, or township shall obtain the approval of the department.

(9) If a county, city, village, or township has issued a municipal security under this section, that county, city, village, or township shall not change the benefit structure of the defined benefit plan if the defined benefit plan is undergoing the partial cessation of accruals. However, a county, city, village, or township may reduce benefits of the defined benefit plan for years of service that accrue after the issuance of municipal securities under this section.

(10) A county, city, village, or township shall not issue a municipal security under subsection (1) or (2) unless the county, city, village, or township has been assigned a credit rating within the category of AA or higher or the equivalent by at least 1 nationally recognized rating agency.

(11) A county, city, village, or township that issues a municipal security under subsection (1) shall covenant with the holders of the municipal security and this state that it will not, after the issuance of the municipal security and while the municipal security is outstanding, rescind whatever action it has taken to make a partial or complete cessation of accruals to a defined benefit plan or the closure of the defined benefit plan for new or existing employees.

(12) IF A COUNTY, CITY, VILLAGE, OR TOWNSHIP HAS ISSUED A MUNICIPAL SECURITY UNDER SUBSECTION (1) OR (2), THE COUNTY, CITY, VILLAGE, OR TOWNSHIP MAY ISSUE A REFUNDING SECURITY TO REFUND THAT MUNICIPAL SECURITY UNDER THIS SECTION AFTER DECEMBER 31, 2015 IF THAT REFUNDING SECURITY DOES NOT HAVE A FINAL MATURITY LATER THAN THE FINAL MATURITY OF THE MUNICIPAL SECURITY BEING REFUNDED AND IF THE MUNICIPALITY THAT ISSUED THE MUNICIPAL SECURITY HAS BEEN ASSIGNED A CREDIT RATING WITHIN THE CATEGORY OF AA OR HIGHER OR THE EQUIVALENT BY AT LEAST 1 NATIONALLY RECOGNIZED RATING AGENCY IN CONNECTION WITH THE REFUNDING SECURITY.